

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Craig Anderson	Team: Squad #7	CCRB Case #: 201510852	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 12/26/2015 10:20 AM, Monday, 12/28/2015	Location of Incident: East 153rd Street and Third Avenue; 40th Precinct stationhouse	Precinct: 40	18 Mo. SOL 6/26/2017	EO SOL 6/26/2017	
Date/Time CV Reported Mon, 12/28/2015 2:58 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 12/28/2015 2:58 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Fernando Rodriguez	27943	954282	040 PCT
2. POM Argenis Rosado	00837	949573	040 PCT
3. POM Stephen Carey	06102	948745	040 PCT
4. POM Herme Perdomo	01981	949467	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Argenis Rosado	Abuse: On December 26, 2015 at East 153rd Street and Third Avenue in the Bronx, PO Argenis Rosado stopped § 87(2)(b)	
B.POM Fernando Rodriguez	Abuse: On December 26, 2015 at East 153rd Street and Third Avenue in the Bronx, PO Fernando Rodriguez stopped § 87(2)(b)	
C.POM Fernando Rodriguez	Abuse: On December 26, 2015 at East 153rd Street and Third Avenue in the Bronx, PO Fernando Rodriguez stopped § 87(2)(b)	
D.POM Fernando Rodriguez	Force: On December 26, 2015 at East 153rd Street and Third Avenue in the Bronx, PO Fernando Rodriguez pointed his gun at § 87(2)(b) and § 87(2)(b)	
E.POM Argenis Rosado	Force: On December 26, 2015 at East 153rd Street and Third Avenue in the Bronx, PO Argenis Rosado pointed his gun at § 87(2)(b)	
F.POM Fernando Rodriguez	Discourtesy: On December 26, 2015 at East 153rd Street and Third Avenue in the Bronx, PO Fernando Rodriguez spoke discourteously to § 87(2)(b) and § 87(2)(b)	
G.POM Fernando Rodriguez	Abuse: On December 26, 2015 at East 153rd Street and Third Avenue in the Bronx, PO Fernando Rodriguez frisked § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
H.POM Herme Perdomo	Abuse: On December 28, 2015 at the 40th Precinct stationhouse, PO Herme Perdomo did not process § 87(2)(b)'s complaint regarding officers.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

### Case Summary

On December 26, 2015 at approximately 10:20 a.m., PO Fernando Rodriguez, PO Argenis Rosado, and PO Stephen Carey, all of the 40<sup>th</sup> Precinct, stopped § 87(2)(b) and § 87(2)(b) at East 153<sup>rd</sup> Street and Third Avenue in the Bronx (**Allegations A, B, and C**). § 87(2)(b) and § 87(2)(b) were guards for a check cashing business and § 87(2)(b) had a handgun in a holster on his waist, for which he had a concealed carry permit (see Board Review 01). PO Rodriguez and PO Rosado got out of their police car and pointed their guns at § 87(2)(b). PO Rodriguez also allegedly pointed his gun at § 87(2)(b) (**Allegations D and E**). PO Rodriguez allegedly made numerous discourteous statements to § 87(2)(b) and § 87(2)(b) throughout the encounter (**Allegation F**). PO Rosado handcuffed § 87(2)(b) and PO Rodriguez handcuffed § 87(2)(b). PO Rodriguez allegedly frisked § 87(2)(b) (**Allegation G**). After the officers verified the validity of § 87(2)(b)'s concealed carry permit, both men were released with no arrest or summons issued.

On December 28, 2015 at approximately 11 a.m., § 87(2)(b) went alone to the 40<sup>th</sup> Precinct stationhouse and asked PO Herme Perdomo to file a CCRB complaint about the incident described above. § 87(2)(b)'s intention was to file the complaint at the stationhouse, but he alleged that PO Perdomo would not take his complaint and instead directed him to call a number that was listed on a poster with the CCRB's information (**Allegation H**).

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation. § 87(2)(b) was unsure whether he would prefer mediation or investigation, but § 87(2)(b)'s rejection made this case ineligible for mediation regardless of § 87(2)(b)'s preference.
- As of March 15, 2016, neither § 87(2)(b) nor § 87(2)(b) has filed a notice of claim related to this incident with the Comptroller's office (see Board Review 02).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b) (see Board Review 03). § 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]
- PO Rodriguez has been a member of the NYPD for three years and there are three prior complaints against him, containing thirteen allegations. Two of his prior complaints contain discourteous language allegations. In case 201501745, allegations of discourtesy and a retaliatory summons were substantiated. The CCRB recommended command discipline; the NYPD has not yet imposed a penalty.
- PO Rosado has been a member of the NYPD for five years and there are three prior complaints against him, none of which included substantiated allegations.

- PO Perdomo has been a member of the NYPD for five years. There is one prior complaint against him, in which a force allegation was administratively closed.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- PO Rodriguez, PO Rosado, and PO Carey all stated that PO Rodriguez observed § 87(2)(b) s gun first. After parking their vehicle, PO Rodriguez and PO Rosado got out and stopped the men. PO Rosado had no significant interaction with § 87(2)(b) therefore, only the stop of § 87(2)(b) (**Allegation A**) is pleaded against him. PO Rodriguez ordered § 87(2)(b) to stop, after which he handcuffed § 87(2)(b) therefore, the stops of both men (**Allegations B and C**) are pleaded against PO Rodriguez. PO Carey was in the back seat of the police car. The rear doors can only be opened from the outside, so PO Carey was unable to get out of the vehicle until after PO Rodriguez and PO Rosado had handcuffed § 87(2)(b) and § 87(2)(b) § 87(2)(g)
- § 87(2)(b) and § 87(2)(b) said that only one officer – who § 87(2)(b) identified by name as PO Rodriguez – pointed his gun at them during the incident, but PO Rodriguez and PO Rosado both said they pointed their guns. § 87(2)(g)
- § 87(2)(b) read the nameplate of the officer who allegedly spoke discourteously and reported that it said “Rodriguez.” § 87(2)(g)
- § 87(2)(b) believed – but was not certain – that the driver of the police car was the officer that frisked him. However, PO Rodriguez – the front passenger of the car – said that he handcuffed § 87(2)(b) and removed his wallet from his pocket while the driver, PO Rosado, dealt with § 87(2)(b) § 87(2)(g)
- § 87(2)(b) said that the officer he asked to file a CCRB complaint was seated at a small desk that he encountered immediately upon entering the 40<sup>th</sup> Precinct stationhouse. Based on the statements of PO Perdomo and PO David Reyes, this refers to the telephone and switchboard operator’s desk. § 87(2)(b) described the officer as a uniformed Hispanic man who was about 5’7” tall with a heavy build and a spiky fade haircut. PO Perdomo is a Hispanic man who is 5’9” tall and weighs 187 pounds (see Board Review 24). Although he has a shaved head, he otherwise matches § 87(2)(b) s description reasonably well. § 87(2)(g)

#### **Allegations not pleaded**

- § 87(2)(b) stated that PO Rosado reached in his pocket and removed his wallet. However, he said that PO Rosado had his permission to do this and this was not a basis for his complaint. § 87(2)(g)
- § 87(2)(g)

§ 87(2)(g)

**Allegation A – Abuse of Authority: On December 26, 2015 at East 153rd Street and Third Avenue in the Bronx, PO Argenis Rosado stopped § 87(2)(b)**

**Allegation B – Abuse of Authority: On December 26, 2015 at East 153rd Street and Third Avenue in the Bronx, PO Fernando Rodriguez stopped § 87(2)(b)**

**Allegation C – Abuse of Authority: On December 26, 2015 at East 153rd Street and Third Avenue in the Bronx, PO Fernando Rodriguez stopped § 87(2)(b)**

It is undisputed that PO Rodriguez and PO Rosado stopped § 87(2)(b) and § 87(2)(b) and that § 87(2)(b) had a licensed handgun in his possession at the time of the stop. § 87(2)(g)

§ 87(2)(b) said his Glock 17 handgun was in a holster on his right hip. § 87(2)(b) wore a hoodie that was long enough to conceal the gun. He said the only time the gun might be visible would be if he extended his arm upward, causing the hem of his hoodie to rise and expose the bottom of the barrel (see Board Review 04). § 87(2)(b) corroborated that § 87(2)(b)'s gun was concealed (see Board Review 05). Both men said they were crossing the street to go to a restaurant when the officers stopped them.

PO Rodriguez said he was the first officer to observe § 87(2)(b)'s gun. As PO Rosado drove on Third Avenue, PO Rodriguez saw the grip and trigger of a handgun sticking out the top of § 87(2)(b)'s jeans. PO Rodriguez said § 87(2)(b) had no holster, but put the barrel into his jeans. PO Rodriguez alerted the other officers and PO Rosado made a U-turn to better observe § 87(2)(b) after which the other officers saw the gun. PO Rodriguez also said that both men started crossing the street after they noticed the police car and that § 87(2)(b) repeatedly looked backward, and said these factors increased his suspicion. During the stop, PO Rodriguez handcuffed § 87(2)(b) while PO Rosado handcuffed § 87(2)(b) and took his gun (see Board Review 06).

PO Rosado said he made a U-turn when PO Rodriguez told him he saw a gun. He then saw a leather case attached to § 87(2)(b)'s belt, but was unsure what it was. He made a second U-turn, after which he saw that § 87(2)(b) wore a gun in a holster on his right hip. The bottom of the barrel stuck out of the holster. PO Rosado also said the men turned around and crossed the street when they noticed his police car. In his CCRB interview, PO Rosado did not mention the presence of § 87(2)(b) until he was asked whether anyone was with § 87(2)(b) at which point he acknowledged § 87(2)(b)'s presence but denied having any interaction with him during the incident (see Board Review 07).

PO Carey was in the back seat of the police car. After PO Rosado turned the car around, PO Carey observed the barrel of a gun sticking out from below § 87(2)(b)'s jacket. The gun appeared to be in a holster. PO Carey made no mention of the men changing direction. Like PO Rosado, he did not mention that § 87(2)(b) was present until he was asked directly. PO Carey

remained in the back seat of the car until after PO Rodriguez and PO Rosado handcuffed § 87(2)(b) and § 87(2)(b) because the back door of the police car could only be opened from the outside (see Board Review 08).

In the State of New York, a gun licensed to an employee of a banking institution must be concealed when carried publicly. N.Y.S. Penal Law, Section 400.00 (see Board Review 09). In the City of New York, Special Carry Guard Licenses are issued by the NYPD and are subject to “conditions and limitation as established by the Police Commissioner.” Rules of the City of New York, Section 5-01 and 5-08 (see Board Review 10). “A person may not be forcibly stopped merely because he or she is seen in the company of another whom the police have probable cause to arrest.” People v. McLoyd, 946 N.Y.S.2d 829 (2012 – Sup. Ct. NY County) (see Board Review 11).

§ 87(2)(g)  
[REDACTED]

[REDACTED]

**Allegation D – Force: On December 26, 2015 at East 153rd Street and Third Avenue in the Bronx, PO Fernando Rodriguez pointed his gun at § 87(2)(b) and § 87(2)(b)**

**Allegation E – Force: On December 26, 2015 at East 153rd Street and Third Avenue in the Bronx, PO Argenis Rosado pointed his gun at § 87(2)(b)**

§ 87(2)(b) said that PO Rodriguez pointed his gun at him and § 87(2)(b) PO Rodriguez put his own gun away after he took § 87(2)(b)'s gun. § 87(2)(b) corroborated this. Neither man alleged that a second officer pointed his gun at them.

PO Rodriguez and PO Rosado both acknowledged pointing their guns at § 87(2)(b) during this incident. Both officers said they did not point their guns at § 87(2)(b). They said they holstered their weapons after § 87(2)(b) complied with instructions to lie on the ground.

The police department “permits an officer broad discretion to display his weapon whenever he feels that his life or the life of another is endangered,” so long as his or her actions are reasonable when considering the totality of the surrounding circumstances. Police Department v. Gliner, OATH Index No. 955/00 (see Board Review 12).

§ 87(2)(g)

**Allegation F – Discourtesy: On December 26, 2015 at East 153rd Street and Third Avenue in the Bronx, PO Fernando Rodriguez spoke discourteously to § 87(2)(b) and § 87(2)(b)**

§ 87(2)(b) alleged that PO Rodriguez said, “Get the fuck on the ground” when he pointed his gun at him. § 87(2)(b) attempted to explain that he was an armed guard, but PO Rodriguez told him to “shut the fuck up.” § 87(2)(b) got on the ground, after which PO Rodriguez said, “Put your hands behind your fucking back.” § 87(2)(b) dropped his phone as he got on the ground and asked the officers to grab it, to which PO Rodriguez responded, “Fuck your phone.” After the officers examined § 87(2)(b) s permit, PO Rodriguez said, “I could have fucking killed you.”

§ 87(2)(b) s testimony regarding PO Rodriguez’s language was similar to § 87(2)(b) s testimony. He alleged that, as PO Rodriguez pointed his gun, he said, “Get the fuck on the floor. You fucking stupid?” and “You think I’m fucking playing? Put your hands up.” At the conclusion of the stop, PO Rodriguez repeatedly said, “I could have fucking shot you” and similar statements.

Three employees of stores located near the incident location provided phone statements, but, due to their distance from the officers, they could not hear much of the verbal interaction in this incident and did not know whether any officer used obscenities (see Board Review 13, 14, and 15).

PO Rodriguez denied using any obscenities during this incident. PO Rosado and PO Carey said they did not remember PO Rodriguez using any obscenities and did not do so themselves.

Officers must be “courteous and respectful” when interacting with the public. Patrol Guide, Section 203-09 (see Board Review 15).

§ 87(2)(g)

§ 87(2)(g)

**Allegation G – Abuse of Authority: On December 26, 2015 at East 153rd Street and Third Avenue in the Bronx, PO Fernando Rodriguez frisked § 87(2)(b)**

§ 87(2)(b) alleged that an officer frisked the area around his pockets after handcuffing him.

§ 87(2)(b) § 87(2)(b) said that officers searched the man with the gun, but did not search the other man (see Board Review 13). § 87(2)(b) § 87(2)(b) § 87(2)(b), believed that officers searched both men. § 87(2)(b) § 87(2)(b)'s coworker, § 87(2)(b) did not see the beginning of the incident (see Board Review 14).

PO Rodriguez acknowledged that he handcuffed § 87(2)(b) and checked his ID, but denied frisking him. PO Rosado said he did not know whether PO Rodriguez frisked § 87(2)(b) PO Carey was still in the back seat of the police car when the frisk allegedly occurred and could not see what was going on.

§ 87(2)(g)

**Allegation H – On December 28, 2015 at the 40th Precinct stationhouse, PO Herme Perdomo did not process § 87(2)(b)'s complaint regarding officers.**

At the direction of his supervisor, § 87(2)(b) went to the 40<sup>th</sup> Precinct stationhouse on December 28, 2015 at approximately 11 a.m. to file a CCRB complaint about the incident on December 26, 2015. After he entered the stationhouse and went around a barricade, he encountered an officer – identified by the investigation as PO Herme Perdomo – seated at a small desk. He told PO Perdomo, “I’d like to file a CCRB.” § 87(2)(b) gave a brief summary of the incident he wanted to file a complaint about. PO Perdomo said, “Go to the wall over there.” § 87(2)(b) § 87(2)(b) shook his head in irritation as he walked toward the wall, and PO Perdomo then came over and indicated a poster with the CCRB’s information on it. § 87(2)(b) filed his complaint with the CCRB by phone later that day. § 87(2)(b) did not mention his attempt to file a complaint at the stationhouse in his brief message on the CCRB’s Call Processing System, but he



provided consistent testimony during a phone statement on December 29, 2015, saying that the officer he spoke to was unhelpful and told him to “Go to the wall” (see Board Review 26).

PO Perdomo had no memory of interacting with § 87(2)(b) or of anyone asking to file a CCRB complaint on December 28, 2015. He confirmed that the telephone and switchboard operator is generally the first person that a civilian would interact with upon entering the stationhouse. He denied knowledge of any CCRB poster in the stationhouse, and said that his usual procedure if someone asked him to file a CCRB complaint would be to refer that person to the desk sergeant (see Board Review 16). The desk sergeant is listed on the roll call as Sgt. Raymond Ip, an Asian man; he was not interviewed, given that § 87(2)(b) did not describe encountering any Asian men when he went to the stationhouse.

PO David Reyes, the stationhouse security officer, also had no memory of § 87(2)(b). He said the stationhouse security officer is stationed immediately outside the main entrance to the building. PO Reyes confirmed that there is a CCRB poster inside the 40<sup>th</sup> Precinct stationhouse and said he has directed a person to it on one occasion. (PO Reyes did not think that person was § 87(2)(b) because that person did not mention having a gun pointed at him and never asked to file his complaint at the stationhouse.) (see Board Review 17).

The CCRB never received § 87(2)(b)'s complaint from the 40<sup>th</sup> Precinct, and there are no entries about § 87(2)(b) on the command log (see Board Review 25).

If a civilian wishes to file a CCRB complaint in person at a police stationhouse, officers must provide the person with a copy of a Civilian Complaint Report with which to file the complaint. Patrol Guide, Section 207-31 (Board Review 18).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g), § 87(4-b)  
[REDACTED]

§ 87(2)(g), § 87(4-b) [Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
[Redacted]  
[Redacted]

---

Squad: 7

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date